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May 7, 2012

Via Federal Express

Superfund Enforcement Assessment Section (6SF-TE)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Attn: Mr. Lawrence Andrews, Enforcement Officer

Re: Gulfco Marine Maintenance Superfund Site, Freeport, Brazoria County
Texas SSID No. 06JZ, Request for Information under CERCLA 104(e)
Chalos & Co. Ref: 2253.001

Dear Mr. Andrews:

We are counsel for Marmac LLC d/b/a McDonough Marine Service (MMS) and have been retained to provide a response to your letter, received February 6, 2012, requesting information pursuant to section 104(e) of CERCLA on behalf of MMS. MMS responds to the above referenced request as follows:

1. *Provide the full legal name and mailing address of the Respondent.*

Marmac LLC d/b/a McDonough Marine Service
1750 Clearview Parkway, Suite 201
Metairie, Louisiana 70001

2. *Identify and provide the full name, title, business address, and business telephone number for each person answering these questions on behalf of the Respondent, and each person(s) that was relied on or consulted within the preparation of the answer.*

The answers provided below were prepared by the following individual:

Melissa Patzelt-Russo, Esq.
Counsel for Marmac LLC d/b/a McDonough Marine Service
Chalos & Co, P.C.
55 Hamilton Avenue
Oyster Bay, New York 11771
Tel: (516) 714-4300

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The following individuals, employed by MMS during the relevant time period, were consulted and relied on in order to prepare and answer the questions below:

- i. Mr. Pat Stant, President
1750 Clearview Parkway, Suite 201
Metairie, Louisiana, 70001
Tel: (504) 780-8100
- ii. Mr. Ron White, Vice President – Project Cargo
17500 Market Street
Channelview, Texas 77530
Tel: (281) 452-5887
- iii. Mr. John Stevenson, Sales Manager
17500 Market Street
Channelview, Texas 77530
Tel: (281) 773-4343
- iv. Mrs. Marie Cabirac, Data Control Supervisor
1750 Clearview Parkway, Suite 201
Metairie, Louisiana, 70001
Tel: (504) 780-8100
- v. Mrs. Dayla Walkowski, Administrative Manager
1750 Clearview Parkway, Suite 201
Metairie, Louisiana, 70001
Tel: (504) 780-8100
- vi. Mr. Terry Feehan, Superintendent of Maintenance – Louisiana
414 Bayou Road
Belle Chasse, Louisiana
Tel: (504) 394-7547
- vii. Mr. Brian O'Brien, Chief Financial Officer
17500 Market Street
Channelview, Texas 77530
Tel: (281) 452-5887

3. *If Respondent wishes to designate an individual for all future correspondence concerning this site, including legal notices, please provide the individual's name, address and telephone number.*

Chalos & Co, P.C.
55 Hamilton Avenue
Oyster Bay, NY 11771
Tel: (516) 714-4300

Attn: George M. Chalos, Esq.
Melissa Patzelt-Russo, Esq.



4. *Identify and include a brief description of the nature, timeframe(s) and status of the Respondent's business relationships with Gulfco Inc., Gulfco Marine Maintenance, Inc., Fish Engineering and Construction, Inc., Hercules Marine Services Corporation, LDL Coastal Limited L.P., LDL Management LLC, and any other previous or current owner or operator of the site.*

Upon a through review of its available corporate records and files, MMS was unable to locate any documents relating to any type of business relationship with Gulfco Inc., Gulfco Marine Maintenance, Inc., LDL Coastal Limited L.P., or LDL Management LLC. Additionally, none of the employees interviewed had any recollection of MMS ever conducting business with Gulfco Inc., Gulfco Marine Maintenance, Inc., LDL Coastal Limited L.P., or LDL Management LLC. MMS requires all sales staff employees to prepare a weekly call report indicating all the possible clients each employee met with during the previous week. These records are retained for five (5) to seven (7) years and then discarded. As such, electronic sales records pre-dating 2005 are no longer readily available.

MMS had a very limited business relationship with Fish Engineering and Construction, Inc. Specifically, in the early 1980s, a retired MMS salesman, who was not available for an interview, provided a quotation to Fish Engineering and Construction, Inc. for the chartering of a barge owned by MMS. MMS's standard practice after a member of the sales staff discusses chartering options with a potential client is to prepare a formal written quote letter. This quote letter would describe the job to be done, as well as the daily or monthly rate for the barge. After receiving the quote letter, Fish Engineering and Construction, Inc. decided not to charter a barge from MMS. A copy of this quote letter is unavailable, as MMS's standard practice is to only retain quote letters in their files for a short time after the quote is provided to the potential client. Additionally, Ron White, MMS's Vice President of Project Cargo stated that while he was working as a salesman between 1988 and 1992, he made numerous attempts to secure Fish Engineering and Construction, Inc. as a client but was unable to do so.

MMS has never had a business relationship with Hercules Marine Services Corporation. However, MMS chartered three (3) barges to Hercules Offshore Corporation prior to the date when Hercules Offshore Corporation operated the Gulfco Superfund Site. The first barge was bareboat chartered for the period July 14, 1984 to July 27, 1984. The barge was picked up and returned to Morgan City, Louisiana. The second barge was bareboat chartered for the period July 14, 1984 to July 20, 1984. The barge was picked up and returned to Morgan City, Louisiana. The third barge was bareboat chartered for the period November 16, 1989 to November 28, 1989. The barge was picked up and returned to Harvey, Louisiana. The Louisiana sales department handled these charters. MMS no longer has an ongoing business relationship with Hercules Offshore Corporation.



5. *Identify all transactions with the Site owners and/or operators of the Site that resulted in materials being sent to the Site by you for any purpose, including but not limited to barge cleaning. Identify and provide all documents related to each transaction, including but not limited to invoices, manifests, shipping papers, bills of lading, receipts, log book entries, trip tickets, work orders, contracts, documents showing the nature of the materials involved, and any EPA and/or State environmental filings or correspondence. For each transaction, identify and state:*
- The type and purpose for the transaction;*
 - A description of the materials involved, including their quantity and chemical content and characteristics;*
 - Any amounts paid by you in connection with each transaction;*
 - The date of each transaction; and*
 - The date the materials were sent to the Site.*

Upon a through review of its records and files, MMS was unable to locate any documents or other records indicating that MMS arranged for any of its barges to be cleaned at the Gulfco Superfund Site. Additionally, after conducting interviews with six (6) MMS employees, employed during the period in question, none were familiar with the Gulfco Superfund Site.

Between 1971 and 1998, MMS owned between six-hundred thirty (630) and seven-hundred ten (710) barges. Currently, MMS owns seven-hundred eleven (711) barges, comprised of five-hundred fifty-six (556) inland barges, one-hundred six (106) US Coast Guard certified barges for the transport of non-hazardous oilfield waste and forty-nine (49) ocean barges. An inland barge is restricted to transporting goods on rivers, canals, sounds, bays and inland lakes. When a client signs a bareboat charter for an inland barge, the client is restricted from bringing this barge in the ocean. An ocean barge is meant to transport cargo beyond the inland water boundaries of a country. Many of MMS's clients will charter an ocean barge when they seek to transport cargo around the Gulf of Mexico.

MMS charts a majority of its barges using a bareboat charter agreement. A bareboat charter is a form of vessel rental in which the charterer assumes total responsibility for the barge and its operations as if it were their own. For your reference, we have enclosed a sample bareboat charter agreement currently used by MMS as *Exhibit A*. Before the barge is picked up and after the barge is returned, a survey is conducted of the condition of the barge. The survey can be conducted by an employee of MMS or by a third-party survey company. The charterer is responsible for returning the barge in the same exact condition as it was picked up. In this regard, it is the sole responsibility of the charterer to return the barge to MMS in a clean condition. MMS has no say in where the charterer takes the barge to be cleaned. A survey report is generated within one (1) day of the return of the barge. If the barge needs to be cleaned, the MMS sales staff will contact the client and discuss what the client needs to do in order for MMS to accept the return of the barge. Generally, the surveyor will obtain three (3) quotes for the work that needs to be done, from shipyards located close to the return location as a courtesy to the



charterer. The charterer then makes arrangements for the barge to be cleaned based on the quotes provided. Please note that the charterer is not required to engage one of the suggested companies to complete any work required. The charterer may retain any company to complete the required work. The vessel remains on charter, with the charterer continuing to pay the daily rate, until MMS deems that the barge is in acceptable return condition. After the cleaning is completed, the cost for the work is billed directly to the client or to MMS. If the company completing the work bills MMS directly, that amount is added to the client's next invoice.

Because MMS requires that the charterer handle all barge cleaning prior to returning the barge, MMS has not directed any barges to be cleaned at the Gulfco Superfund Site. As such, there are no documents related to any transactions with the owners or operators of the Gulfco Superfund Site available to MMS. It is MMS's policy to only handle cleaning chartered barges if the required cleaning is extremely minor, such as cleaning up a small amount of dirt or oily residue on the deck of the barge. Additionally, if MMS handles any minor cleaning, it will generally be done in the same location as the barge was returned, using a mild non-hazardous biodegradable degreaser. Any costs associated with this minor cleaning will be billed to the client. If extensive cleaning is required, it will always be the responsibility of the charterer to arrange for the cleaning of the barge.

6. *Identify all persons, including the Respondent, who may have arranged for disposal or treatment or arranged for transportation for disposal or treatment of materials, hazardous materials, hazardous substances, and/or hazardous wastes (materials) from various facilities to the Site. This information shall identify and state, but not be limited to the following:*
 - a. *The persons with whom the Respondent made such arrangements;*
 - b. *The precise locations from which these materials originated;*
 - c. *The nature, including the chemical content, characteristics, physical state (e.g., solid or liquid) and quantity (e.g., volume or weight) of all materials involved in each such arrangement;*
 - d. *All test, analyses, analytical results, and manifests concerning each material involved in such transactions;*
 - e. *The persons who selected the location to which the materials were to be disposed and/or treated. In particular, the persons who selected the Site as a location for disposal and/or treatment of the materials. This information shall include where these persons intended to have the materials involved in each arrangement treated or disposed and all evidence of their intent;*
 - f. *The amount paid in connection with each such arrangement, the method of payment, and the identity of the persons involved in each payment transaction; and*
 - g. *Provide contracts or other documents reflecting such arrangements for transportation, disposal, and/or treatment of materials.*



MMS is unaware of any charterers arranging for disposal or treatment or arranging for the transportation for disposal or treatment of materials, hazardous materials, hazardous substances, and/or hazardous wastes (materials) from various facilities to the Gulfco Superfund Site. If any of MMS's clients made such arrangements, MMS would not be privy to this information. Additionally, MMS only has client and charter records readily available from 2007 to the present. Records dating back to 1997 are stored on an older computer database and server that is no longer used by MMS and has not been accessed since MMS switched to their current system in 2007. The only charter information carried over from the previous system was for barges that were on charter at the time of the switch. If the vessel was not on charter when the switch was made, the charter history records were not placed on the new system. The old database contains only data from one (1) year of the requested time period, while the remaining data for the requested time frame is unavailable. Based upon our interviews with MMS's employees, setting up the old server would provide no additional responsive documentation and would be extremely expensive and time consuming. Additionally, through MMS's search for non-electronic records, numerous boxes containing barge maintenance records dating back to the mid-1970s were found. MMS is currently reviewing these records and should any responsive documents be identified we will provide a supplemental response to this information request.

7. *Identify the corporate relationship(s) (such as successor by name change, successor by merger, etc.) between the named recipient of this request and its related entities as named at the time materials were sent by Respondent to the Site. Provide the corporate records which document that corporate relationship(s), including but not limited to documents related to mergers, acquisitions, sales, and assignments of liability.*

Prior to 1999, all business activities were carried on by Marmac Corporation. In 1999, Marmac Corporation was renamed McDonough Corporation. The company then split into three (3) subsidiaries: Marmac LLC, McDonough Project Services LP and Mr. Mac LLC. Marmac, LLC does business in the United States as McDonough Marine Service. McDonough Project Services LP is a limited partnership that handles all rentals of tug boats for McDonough Corporation. Mr. Mac LLC is a .1% owner of MMS.

8. *Provide names and addresses for all carriers who transported materials on behalf of Respondent to hazardous waste treatment, storage or disposal facilities permitted by EPA or the State.*

MMS does not use any hazardous chemicals when minor deck cleaning on their barges is required. However, the shipyard equipment used in MMS's Louisiana shipyard has oil filters that need to be occasionally replaced. When these filters are replaced, the old filters and any oily rags used are stored in a drum and picked up by FCC Environmental, US Filters or Siemens.



9. *Identify whether a Notification of Hazardous Waste Activity was ever filed with EPA or the corresponding agency or official of the State. This information shall include, but not be limited to the following:*

- a. The date of such filing;*
- b. The waste described in such notice;*
- c. The quantity of the waste described in such notice; and*
- d. The identification number assigned to such facility by EPA or the State.*

MMS has never filed Notification of Hazardous Waste Activity with the EPA or a corresponding agency or official of any state a

10. *Identify all federal, state and local offices and agencies to which the Respondent has sent or filed hazardous substance or hazardous waste information and state the years during which such information was sent or filed.*

MMS has never filed any hazardous substance or hazardous waste information with any federal, state or local office during the relevant time period.

Please do not hesitate to call on us if there are any other questions or issues which the Environmental Protection Agency seeks supplemental information or clarification. Of course, we, on behalf of MMS, respectfully reserve all rights to supplement this response as and when any additional responsive materials are identified.

Respectfully submitted,

CHALOS & Co, P.C.

George M. Chalos, Esq.
Melissa Patzelt-Russo, Esq.

GMC/mdr

EXHIBIT A

UNIVERSAL BLANKET BARGE BAREBOAT CHARTER AGREEMENT

This agreement is entered into between MARMAC, LLC, d/b/a McDONOUGH MARINE SERVICE, (hereinafter referred to as "OWNER"), and _____ (hereinafter referred to as "CHARTERER"), this _____ day of _____, 20____, and in consideration of the covenants and provisions hereinafter provided, including addendum, shall control and govern the bareboat chartering of barges by OWNER to CHARTERER. OWNER shall be defined within this contract to also include the barge owner.

WITNESSETH:

OWNER hereby agrees to let and CHARTERER hereby agrees to hire such of the OWNER's barges (hereinafter called "Barge(s)") as the OWNER and CHARTERER shall designate, in the manner and form hereinafter provided.

At the time an agreement is made between OWNER and CHARTERER, to charter and hire a specific Barge, OWNER will prepare and furnish to CHARTERER a "confirmation of Charter Order" on the form shown in Exhibit "A" in duplicate. Charter Orders may be written in the form of Exhibit A or perfected on an oral basis which shall be confirmed in writing by OWNER as soon as is practical under the circumstances. In the event OWNER does not reduce an oral order to writing, a Charter Order will have been deemed to be executed by the Parties upon the provision of a vessel by OWNER, and the terms and conditions hereof shall apply. Delivery to and use by CHARTERER of the Barge, which may include any actions taken by CHARTERER under any provision of this charter, establishes conclusively that all of the terms and conditions of this Universal Blanket Barge Bareboat Charter Party are in effect, notwithstanding whether or not the CHARTERER has returned a signed Charter Order to OWNER.

The charter hire shall be at a rate mutually agreed between OWNER and CHARTERER at the time of CHARTERER's order of any specific Barge under this agreement, and shall be for a base term of one day (or part thereof) or one month or alternate term as stated on the Charter Order, and such charter shall continue in effect from day-to-day after the base term until termination by CHARTERER or by OWNER, which shall be in addition to those causes for termination herein provided. OWNER reserves the right to continue the Charter hire rate as stated in the Charter Order, or renegotiate the Charter hire rate provided the renegotiated rate is reasonable and within the current market conditions for barges of like kind structure and abilities. CHARTERER may either agree to renew the charter or return the barge in accordance with the conditions stipulated herein.

Charter hire shall be due and payable monthly to OWNER at its place of business, commencing on the date of delivery as stated in the Charter Order of any barge bareboat chartered under this agreement. Interest shall accrue on all unpaid charter hire at the rate of 1.5% per month, 30 days after date due.

The delivery to CHARTERER of a Barge, and the acceptance thereof by CHARTERER, shall establish conclusively that CHARTERER has inspected or has caused to be inspected or has elected to waive inspection of the Barge and agrees that the Barge is in a good and seaworthy condition, and in all respects fit for the service intended; and thereafter, CHARTERER shall not be entitled to make or assert and hereby agrees not to make or assert any claim against the OWNER on account of any representations or warranties, expressed or implied, with respect to the condition of said Barge. CHARTERER's right to inspect the Barge shall be at CHARTERER's expense and shall occur prior to commencement of this charter.

During the term of any Barge charter, all costs and expenses incident to the use and operation of said Barge shall be for the account of CHARTERER, including, but not limited to, all sales, use, franchise or property taxes applicable to this transaction, excepting franchise and property taxes assessed in the states of Louisiana, Texas or Virginia.

INSURANCE:

The Charter Order shall designate who shall provide insurance coverage for Barge during each charter period. The insuring terms below shall govern dependant on the selection chosen in each Charter Order.

A. OWNER Insures:

OWNER hereby agrees to provide, carry and pay for Hull insurance (amount to be shown on Charter Order) and Protection & Indemnity insurance (to \$500,000) on Barges chartered under this agreement. In the event of losses covered by Hull insurance provided for the Barge, the "OWNER HULL" shown on the Charter Order shall be the agreed value of the Barge; however, in cases of uninsured Loss (due to cumulative deductible or otherwise), the value of the Barge shall be that shown on the Charter Order as "Hull Value of Vessel". OWNER's coverages will be confirmed by a current Certificate of Insurance (to be replaced at policy renewals). The insurances agreed to herein and provided by OWNER shall name CHARTERER as additional assured subject to CHARTERER having fully executed this Universal Blanket Bareboat Charter Agreement, the Barge Charter Order and having returned same to OWNER. The CHARTERER's status as an additional assured is defined by this Universal Blanket Bareboat Charter Agreement, Charter Order, and policies of insurance and is also limited in the following respects: 1) These insurances exclude the crew and employees of additional assureds, and CHARTERER shall provide or arrange for the provision of insurances so as to insure the liability, if any, of OWNER to crew or employees of additional assureds; 2) In the event a powered vessel owned by CHARTERER or other additional assured causes a casualty in any way involving a Barge chartered hereunder, no additional assured status or waiver of subrogation in OWNER's policy or policies shall serve to limit the OWNER or its underwriters' right of recovery against such vessel and its underwriters. All costs or expenses incurred against OWNER's policies shall be subject to deductibles shown on the Charter Order. All insurance deductibles shall be paid for by CHARTERER.

In the event of any casualty, loss or damage to or involving said barge where CHARTERER is an assured in any policy of applicable insurance (other than any insurance furnished by OWNER) then CHARTERER agrees to make claim against said insurances in which CHARTERER is an assured, in addition to claiming against insurance furnished by OWNER.

B. CHARTERER Insures:

CHARTERER agrees to provide, carry and pay for full form Hull and Protection and Indemnity insurances on forms and with insurers acceptable to OWNER on barges chartered under this agreement. Deductibles under these policies shall be paid for by CHARTERER. These insurances shall be arranged to insure the liability, if any, of OWNER and vessels for anyone injured or damaged in an incident connected in any way with barges chartered hereunder, including but not limited to the crew, employees or barge servants of the CHARTERER, any third parties, including those working about or aboard such barges at the incident of the CHARTERER or invitees or trespassers.

CHARTERER shall provide Hull insurance, at least to the Hull Value of Vessel shown on the Charter Order. CHARTERER shall provide minimum limits of P & I insurance (primary and excess) of \$5,000,000 or the hull value, whichever is greater. Insurances provided hereunder shall name OWNER as coassured and loss payee under Hull coverage and as their interests may appear under P & I insurances, shall waive subrogation against OWNER, and shall provide for 15 days notice to OWNER of cancellation or material

alteration. CHARTERER agrees to furnish to OWNER valid Certificates evidencing all insurances required hereunder.

In the event of a total or constructive total loss of a barge chartered hereunder, charter hire on that vessel shall cease effective the date of such loss or the date the barge was last heard from. Should CHARTERER and/or its underwriters fail to reimburse OWNER for the full value of such vessel within 30 days of its loss, CHARTERER agrees that charter hire will recommence at its full rate and continue until full payment has been received and accepted by OWNER.

CHARTERER shall notify OWNER and all insurers in writing within 3 days of receiving notice of an occurrence of any casualty, accident or claim in any way involving a Barge chartered hereunder and shall as expeditiously as possible provide or cause to be provided to OWNER full information covering the casualty, accident or claim so as to allow a timely filing of a claim to insurers. In the event CHARTERER fails to make timely notice to OWNER and all insurers of the occurrence of a casualty, and insurance coverages are denied on that basis, or on any other basis due to the acts or omissions of the CHARTERER, CHARTERER agrees to pay for all costs arising from the casualty, including but not limited to, costs for physical damage and personal injury, as liquidated damages. The insurance policy provided by CHARTERER shall be considered primary to any other insurance policy carried by OWNER and OWNER's insurance shall be non-contributing under any circumstances.

Notwithstanding the insurance selection indicated in the Charter Order, at all times, CHARTERER shall protect, defend and indemnify OWNER and Barge with respect to any and all liabilities relating to water, land, air or other environmental pollution, including but not limited to clean-up costs, statutory penalties, etc., arising under any law, whether Federal, state or local, including any liability asserted under common, civil or general maritime law. CHARTERER shall insure these liabilities to the fullest extent possible, and such insurances shall name OWNER and Barge as additional assureds with waivers of subrogation in favor of OWNER and Barge. For qualifying barges, CHARTERER shall secure and maintain a Vessel Certificate of Financial Responsibility (COFR) as issued by the National Pollution Fund Center. CHARTERER shall keep in place a spill response plan in full compliance with all laws and regulations, and upon request, shall provide the OWNER with evidence satisfactory to OWNER of such compliance.

CHARTERER hereby covenants, agrees and binds itself, insofar and to the extent that the insurances as provided herein do not cover, or are not available or sufficient to cover, the responsibility or liability, alleged or actual, of OWNER, and to protect, defend and hold harmless and indemnify OWNER of and from any and all type, nature and character of claims, suits or demands for loss, damage or injury of any nature whatsoever resulting from or in any way connected with the Barge and/or its use, service and operation, whether or not caused in whole or in part by, contributed to, or in any way connected with, fault, negligence or wrongful acts on the part of OWNER (sole or in part), or of CHARTERER, and/or the unseaworthiness of the Barge, whether existing at the time of delivery hereunder or not. Any equipment, supplies, cranes, cargo, etc. (hereinafter called "cargo") not furnished by OWNER, placed and/or carried aboard the Barge, is placed and/or carried aboard at the sole risk and expense of CHARTERER, and CHARTERER hereby assumes full responsibility and liability for any and all damage to the aforesaid cargo, and for its liabilities to third parties, and agrees to protect and defend OWNER and the Barge with separate insurance and/or indemnification in case of any loss to or caused by such cargo.

CHARTERER agrees to maintain the Barge in a good and seaworthy condition during the term of charter, and will return same to OWNER in the same good, seaworthy and clean condition as when the Barge was received, fair wear and tear excepted. If on the return of a Barge OWNER is put to any expense of repairs or cleaning of the Barge to put it in the same good, seaworthy and clean condition as upon delivery, CHARTERER agrees to reimburse OWNER for said expense and to pay charter hire until date Barge is returned to the same good, seaworthy and clean condition.

No alterations, changes or modifications to the integrity or the design of a Barge hull shall be made without obtaining written consent from OWNER.

Barges chartered hereunder shall be used for only lawful trades and employment, and shall be used at all times within the navigational limits of the waters of the United States Gulf Coast, East Coast, the Mississippi River and its tributaries, excluding the Great Lakes, and within navigational limits of insurances provided herein.

Barges chartered hereunder are not to be rechartered, subchartered or removed from the waters of the United States without first obtaining the written consent of OWNER.

Barges are not to be used on routes or for the transportation of products requiring a U.S. Coast Guard certified vessel, unless such Barge is specifically certified for such use.

If a Barge loads or carries cargo outside of the U.S. and is destined for the U.S. or passing through U.S. ports in transit, the CHARTERER shall comply with the current U.S. Customs regulations (19 CFR 4.7) or any subsequent amendments thereto and shall undertake the role of carrier for the purposes of such regulations and shall, in their own name, time and expense:

- a. Have in place a SCAC (Standard Carrier Alpha Code);
- b. Have in place an ICB (International Carrier Bond);
- c. Provide OWNER with timely confirmation of a and b above; and
- d. Submit cargo declarations by AMS (Automated Manifest System) to the U.S. Customs.

The assumption of the role of carrier by the CHARTERER pursuant to this Article and for the purposes of the U.S. Customs Regulations (19 CFR 4.7) shall be without prejudice to the identity of carrier under any bill of lading, other contract, law or regulation.

If the Barge loads or carries cargo which requires that the Barge be certificated by U.S. Coast Guard to do so and consequently is required to comply with vessel maritime security regulations (33 CFR Part 104), CHARTERER shall be responsible for such compliance. CHARTERER shall ensure that the Barge is specifically named within CHARTERER's existing vessel maritime security plan and approval for such regulated use is obtained from U.S. Coast Guard.

Notwithstanding anything else contained in this Agreement all delay, costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with 33 CFR Parts 101-105 including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be for CHARTERER's account.

CHARTERER, as operator, acknowledges that Federal regulations under the Clean Water Act Vessel General Permit program require CHARTERER to be responsible for submitting a Notice of Intent (NOI) to the Environmental Protection Agency (EPA) as the operator of a Barge subject to the EPA's Vessel General Permit rules governing all vessels capable of carrying more than 2113 gallons

of water, regardless of any actual ballast carried during this charter. This program also requires certain operating and recordkeeping procedures as part of this compliance. CHARTERER is responsible for compliance under this Vessel General Permit for any Barge chartered hereunder.

CHARTERER shall be responsible for submittal of all ballast water notification reports in accordance with 33 CFR 151, subpart D, as amended by the June 14, 2004 final rule and any subsequent amendments thereto and must provide OWNER with a copy of all submitted reports.

CHARTERER assumes liability for and shall indemnify, defend and hold harmless OWNER against any loss and/or damage whatsoever (including consequential loss and/or damage) and/or any expenses, fines, penalties and all other claims of whatsoever nature, including, but not limited to, legal costs, arising from the CHARTERER's failure to comply with any of the provisions related to compliance with governmental regulations. Should such failure result in any delay then, notwithstanding any provision in this Agreement to the contrary, the Barge shall remain on hire.

If, at any time during the term of this agreement, CHARTERER shall fail to perform any of its duties or obligation hereunder or shall violate any of the prohibitions imposed upon it under this agreement, or if the CHARTERER shall be dissolved or be adjudicated a bankrupt, or shall have a petition in bankruptcy filed against it, or shall make a general assignment for the benefit of creditors, or receivers shall be appointed for CHARTERER, OWNER may, without prejudice to any other rights which it may have under this agreement, 1) withdraw and retake Barges chartered hereunder, wherever the same may be found and without legal process; 2) declare the entire amount of hire hereunder immediately due and payable as to such Barges without notice or demand to CHARTERER for the whole unexpired term of any specific charter under this agreement. Costs to transport Barges and restore their condition as required in this agreement for proper termination shall be recoverable by OWNER from CHARTERER.

Should OWNER retain an attorney or seek recourse in a court of law for the purpose of enforcing any terms of this agreement, or to collect any sums due thereunder, including, but not limited to charter hire, redelivery costs, damages, clean-up costs, then all reasonable legal fees, expenses and costs, incurred by OWNER shall be due to OWNER from CHARTERER.

Neither the CHARTERER nor the master of any towing vessel has any right, power, or authority to create, incur or permit to be imposed upon any Barge chartered hereunder any liens whatsoever except for crew's wages and salvage, and CHARTERER agrees to notify anyone providing goods and services to the Barge of this lien prohibition. CHARTERER agrees to indemnify, defend, and hold harmless OWNER and the Barge from any and all liens of any kind or nature whatsoever and to promptly discharge said liens which attach against a barge chartered hereunder, and which arise from these charters, notwithstanding any prohibitions contained herein.

This agreement shall continue in force until cancelled by either CHARTERER or OWNER in writing to the other. Any such cancellation notwithstanding, provisions of this agreement shall remain in effect until any barge chartered hereunder shall have been properly redelivered by CHARTERER to OWNER.

The provisions of this Agreement are separable and severable. If any provision, item or application of this Agreement shall be deemed invalid in whole or in part, such invalidity shall not affect other provisions, items or applications of this Agreement which can be given effect without the invalid provision, item or application.

Modification of this agreement requires mutual execution of a written addendum. Notices or communications in connection with this agreement shall be made to the addresses shown hereinbelow.

In witness whereof, this agreement is executed in duplicate originals.

McDONOUGH MARINE SERVICE, OWNER
1750 Clearview Pkwy, Suite 201
Metairie, Louisiana 70001-2470

WITNESS:

Duly Authorized

DATE: _____

, CHARTERER

WITNESS:

Duly Authorized

DATE: _____

Attachment:

Charter Order
Certified Shale Barge Addendum
Spud Barge Addendum